

No. 20-7368

IN THE
Supreme Court of the United States

ANTONIO DEWAYNE HOOKS,
Petitioner,

v.

KAYODI ATOKI, BETHANY POLICE DEPARTMENT, ET AL.
Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Tenth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Court should grant certiorari to review, in instances of deliberate indifference regarding disagreement in the appropriateness of the medical treatment of a pretrial detainee, that the pretrial detainee must show that the conduct of the defendants was objectively unreasonable, notwithstanding the issue that this case involves little more than a disagreement as to the adequacy of the medical treatment provided to a pretrial detainee, and considering such claims do not give rise to constitutional protections.

**PARTIES TO THE PROCEEDING AND RULE
29.6 STATEMENT**

Armor Correctional Health Services, Inc. is not a publicly held corporation or other publicly-held entity. It does have a parent corporation, Armor Correctional Healthcare Holdings, LLC. No other publicly held corporation owns 10% or more of its stock. Fed. R. App. P. 26.1(g)

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CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Pursuant to the Fourteenth Amendment to the United States Constitution: “[n]o State...shall deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

Section 1983, codified as 42 U.S.C. § 1983, provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

42 U.S.C. § 1983.

COUNTER-STATEMENT OF THE CASE

Petitioner does not allege that he was denied treatment or that he did not receive medical treatment for injuries sustained while a pre-trial detainee. Instead, Petitioner has alleged that the medical providers were negligent in the treatment of his injuries. Even if these allegations were taken as true, these allegations fail to satisfy the deliberate indifference standard, as Petitioner has failed to allege that Dr. Jerry Childs or any other Armor Correctional Health Services, Inc. provider knew of and disregarded a substantial risk of harm.

Accordingly, Petitioner's claims amount to no more than a disagreement as to the quality of the medical care that was provided. Such claims do not rise to the level of a constitutional violation under the Eighth or Fourteenth Amendments, and as such the petition for a writ of certiorari should be denied.

SUMMARY OF THE ARGUMENT

This is a factually unremarkable case that raises a narrow issue that does not require intervention by this Court. Deliberate indifference, as a constitutional claim under § 1983, requires an individual to allege misconduct that is “so egregious as to subject the aggrieved individual to a deprivation of constitutional dimensions.” *Martin v. Creek County Jail*, 2010 WL 4683852, 3 (N.D. Okla. 2010) (quoting *Wise v. Bravo*, 666 F.3d 1328, 1333 (10th Cir. 1981).

Moreover, this Court’s ruling in *Kingsley* considered only excessive force claims, not those of deliberate indifference towards pretrial detainees. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). The two situations could not be more opposite: “Excessive force requires an affirmative act, while deliberate indifference often stems from inaction.” *Castro v. City of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (en banc). Accordingly, to assess both excessive force and deliberate indifference by the same standard is inappropriate.

Finally, negligence alone does not adequately form the basis for a § 1983 claim for deliberate indifference to medical needs. *See Green v. Branson*, 108 F.3d 1296, 1303 (10th Cir. 1997). As such, Petitioner’s application of *Kingsley* to deliberate indifference cases would result in the creation of a negligence standard being applied to constitutional claims concerning treatment of pretrial detainees rather than the appropriate constitutional standard of intentionality required for a deliberate indifference claim.

REASONS TO DENY CERTIORARI

I. THE NATURE OF A DELIBERATE INDIFFERENCE CLAIM INFERS A SUBJECTIVE COMPONENT

The Tenth Circuit is correct in their determination that claims of deliberate indifference concerning medical treatment of pre-trial detainees requires an evaluation of the subjective and objective components. To establish the objective component, “the alleged deprivation must be ‘sufficiently serious’ to constitute a deprivation of constitutional dimension.” *Self v. Crum*, 439 F.3d 1227, 1230 (10th Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)).

A claim of deliberate indifference entails something more than negligence. Opinions of this Court and appellate courts have similarly affirmed that prison officials may not be held liable if they prove they were unaware of the risk, *or if they responded reasonably to a known risk – even if the harm ultimately was not averted*. *Farmer v. Brennan*, 511 U.S. 825 (1994), *see also Miller v. Neathery*, 52 F.3d 634 (7th Cir. 1995) (discarding the civil test for negligence in favor of the criminal recklessness standard for constitutional deliberate indifference cases); *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996) (mandating the prisoner prove the official both knew of and disregarded “an excessive risk to inmate health or safety.”); *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996) (Holding that *Farmer* requires “a great deal more of the plaintiff than a showing that the defendants violated generally accepted customs and practices.”); *Holden v. Hirner*, No. 10-3656 (8th Cir. Dec. 2, 2011)(requiring pretrial detainee show that prison officials knew of and

disregarded his dental needs in order to show deliberate indifference); *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004)(To show the prison officials failed to provide adequate medical treatment, [Plaintiff] must prove "(1) he suffered from an objectively serious medical need, and (2) defendants knew of the need yet deliberately disregarded it.").

Further, Courts should not become enmeshed in the minutiae of prison operations. "Concern with minutiae of prison administration can only distract the court from detached consideration of the one overriding question presented to it: does the practice or condition violate the Constitution?" *Bell v. Wolfish*, 441 U.S. 520, 544 (1979), *citing Wolfish v. Levi*, 573 F.2d 118, 123 (2d Cir. 1978).

Here, analysis under both a subjective and objective standard is appropriate, as analyzing deliberate indifference claims under a purely subjective standard would tortify the Fourteenth Amendment in the context of deliberate indifference claims based off of medical needs, impermissibly lowering the constitutional deliberate indifference standard into one akin to mere negligence. Accordingly, this Court should not extend *Kingsley* to apply to deliberate indifference claims.

II. THE ABSENCE OF A CLAIM UNDER A SPECIFIC CONSTITUTIONAL PROVISION MAKES THIS AN INAPPROPRIATE VEHICLE FOR REVIEW

Certiorari is unwarranted because Petitioner has failed to state a constitutional claim against Respondents. In order to "state a claim under § 1983, an individual must allege misconduct that is 'so egregious as to subject the aggrieved individual to a deprivation of

constitutional dimensions.” *Martin v. Creek County Jail*, 2010 WL 4683852, 3 (N.D. Okla. 2010), quoting *Wise v. Bravo*, 666 F.2d 1328, 1333 (10th Cir.1981). “When misconduct falls short of this standard, an individual must seek relief in state court under traditional tort-law principles.” *Id.* “[D]eliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’.” *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976) (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S.Ct. 2909, 2925, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)). “[E]very claim by a prisoner that he has not received adequate medical treatment” does not state “a violation of the Eighth Amendment.” *Id.* at 105).

Differences in judgment between inmates and prison medical personnel regarding appropriate medical diagnosis or treatment also are not sufficient to sustain a deliberate indifference claim. “[I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute ‘an unnecessary and wanton infliction of pain’ or to be ‘repugnant to the conscience of mankind.’” *Id.* at 105-06. Likewise, in medicine, the decision to not act, or not medicate, operate, or otherwise perform some intervention is often the best form of medical treatment a patient can receive for a particular ailment. To remove the subjective component to a medical needs case under 42 U.S.C. § 1983 and the 14th Amendment would seemingly encourage health care providers in a jail setting to medicate, operate, or perform some intervention to avoid the possibility of liability when the appropriate course of action may be no action at all.

As such, a complaint alleging negligence in diagnosing or treating a medical condition does not become a

valid constitutional claim of medical mistreatment simply because the victim is a prisoner. “In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend ‘evolving standards of decency’ in violation of the Eighth Amendment.” *Id.*

Further, negligence alone does not state a constitutional claim under § 1983 for deliberate indifference to medial needs. *See Green v. Branson*, 108 F.3d 1296, 1303 (10th Cir. 1997). When bringing a suit under § 1983, the plaintiff must still prove a violation of the underlying constitutional right; and depending on the right, merely negligent conduct may not be enough to state a claim. *See Daniels v. Williams*, 474 U.S. 327 (1986); *See also, e.g., Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); *Estelle v. Gamble*, 429 U.S. 97, 105, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976). Accordingly, certiorari is not warranted as Petitioner has not brought nor proven a proper constitutional claim.

III. ANALYSIS OF A DELIBERATE INDIFFERENCE CLAIM UNDER A PURELY OBJECTIVE STANDARD IS NOT APPROPRIATE

This Court has specifically stated, and reiterated in *Kingsley*, that “liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.” *County of Sacramento v. Lewis*, 532 U.S. 833, 849 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). “Where the necessity for treatment would not be obvious to a lay person, the medical judgment of the physician, even if grossly negligent, is not subject to second-guessing in the guise of an Eighth Amendment claim.” *Mata v. Saiz*, 427 F.3d 745, 751 (10th

Cir. 2005), *citing Green v. Branson*, 108 F.3d 1296, 1303 (10th Cir. 1997). If medical care was provided, and there is only a disagreement as to whether the proper care was provided, the case sounds in tort and does not rise to the level of a civil rights claim. *Smart v. Villar*, 547 F.2d 112 (10th Cir. 1976); and *Debrow v. Kaiser*, 42 F. App'x 269, 269 (10th Cir. 2002) (“Because [Petitioner’s] medical records clearly indicate that he received a consistent course of treatment for the medical ailments complained of, and in light of our precedent in *Smart v. Villar*, 547 F.2d 112, 114 (10th Cir. 1976) (holding that where there is evidence of a series of sick calls, examinations, diagnoses, and medications, it cannot be said there was deliberate indifference to the prisoner’s complaints, the district court did not abuse its discretion in dismissing the action.”) Where there is no allegation of a total denial of care, but rather plaintiff disagrees with the care provided, the civil rights claim fails. *Kermicle v. Day*, 428 F.Supp. 16, 17-18 (W.D. Okla. 1976). An inadvertent failure to provide adequate medical care does not rise to the level of “wanton infliction of pain” necessary to sustain plaintiff’s burden of proof for denial of the right to medical care. *Estelle*, at 105. A negligent failure to diagnose a medical condition also does not rise to the level of a constitutional violation. *Estelle*, at 105.

Further, “For a pretrial detainee to establish a deprivation of his due process right to adequate medical care, he must demonstrate that a government official acted with deliberate indifference to his objectively serious medical needs.” *Jackson v. Illinois Medi-Car, Inc.*, 300 F.3d 760, 764 (7th Cir. 2002). In order to “state a claim under § 1983, an individual must allege misconduct that is ‘so egregious as to subject

the aggrieved individual to a deprivation of constitutional dimensions.” *Martin v. Creek County Jail*, 2010 WL 4683852, 3 (N.D. Okla. 2010), quoting *Wise v. Bravo*, 666 F.2d 1328, 1333 (10th Cir. 1981). **“When misconduct falls short of this standard, an individual must seek relief in state court under traditional tort-law principles.”** *Id.* (emphasis added). “[D]eliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976) (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S.Ct. 2909, 2925, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)). **“[E]very claim by a prisoner that he has not received adequate medical treatment” does not state “a violation of the Eighth Amendment.”** *Id.* at 105 (emphasis added).

Moreover, the burden that a plaintiff must demonstrate when claiming deliberate indifference “is a very high standard,” *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999), which “make[s] it considerably more difficult for [an inmate] to prevail than on a theory of ordinary negligence,” *Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 73, 122 S.Ct. 515, 151 L.Ed.2d 456 (2001). It is a subjective standard that requires an inmate to prove “that the prison official had actual knowledge of an excessive risk to [his] safety,” *Danser v. Stansberry*, 772 F.3d 340, 347 (4th Cir. 2014). Further, correctional facility official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837, 114 S.Ct.

Petitioner has not met this high standard. Instead, Petitioner makes a claim that amounts to nothing

more than a disagreement over the adequacy of the treatment provided to him, which is, as this Court and others have determined, is not enough to sustain a constitutional claim. To this end, if the subjective element is removed from the constitutional deliberate analysis, then what remains is an analysis under a purely objective standard. This would create the functional equivalent of assessing constitutional claims under the same standard as ordinary medical negligence claims. Consequently, the use of a purely objective standard would essentially create a federal constitutional cause of action for medical negligence. As *Kingsley* itself advised that “liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process. *Kingsley*, 135 S.Ct. at 2472 (quoting *Cnty. of Sacramento*, 523 U.S. 833 at 849), the use of such an objective only standard is inappropriate for the evaluation of constitutional claims.

IV. KINGSLEY DOES NOT APPLY TO DELIBERATE INDIFFERENCE CLAIMS

A plain reading of this Court’s decision in *Kingsley* shows no consideration of applying the objective standard to deliberate indifference claims based on medical needs. Instead, *Kingsley* solely addressed excessive force claims made by pre-trial detainees. These claims are separate and distinct from deliberate indifference claims based on medical needs. Had this Court intended for *Kingsley* to apply to both excessive force claim and medical needs, they had ample opportunity to do so.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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